

Minutes of Public Meeting
Environmental Quality Commission
Room 111 Capitol Annex, Frankfort, Ky.
May 21, 2001--1:00 to 3:30

EQC Commissioners and Staff

Aloma Dew, Chair
Betsy Bennett, Vice-Chair
Gary Revlett
Jean Dorton
Serena Williams
Leslie Cole, Director
Lola Lyle, Research Analyst
Frances Kirchhoff, Adm. Asst.

Speakers/Representatives Present

Jim Villines, Department for Surface Mining
Leah MacSwords and Larry Lowe, Division of Forestry
Millie Ellis, John Gowins and Heather Weese,
Division for Air Quality
John Dovak, Division of Water
Bruce Scott, Division of Water
Allen Luttrell, Deputy Commissioner, Dept. for Surface
Mining Reclamation and Enforcement

Opening Remarks

Environmental Quality Commission (EQC) Chair Aloma Dew opened the meeting at 1:05 pm. Approximately 20 people were in attendance. The Chair introduced the newest member of the EQC staff, Lola Lyle. Ms. Lyle was hired April 1 as EQC's research analyst.

The purpose of the meeting was to

- review several sets of proposed regulations,
- receive a briefing on the emergency concentrated animal feeding operation (CAFO) regulations,
- receive a status report on the Martin County Coal slurry spill, and be provided an update on the state's investigation of the safety of coal slurry impoundments.

Approval of Minutes

A motion was made by Jean Dorton and seconded by Gary Revlett to approve the minutes of EQC's February 22 meeting. The motion passed unanimously.

Department of Surface Mining Regulation

Chair Dew introduced Jim Villines, Department of Surface Mining. Mr. Villines gave an overview of 405 KAR 18:210 Coal Subsidence Rule. Discussion followed. A motion to approve the regulation was made by Gary Revlett and seconded by Betsy Bennett. The motion passed unanimously.

Division of Forestry Agriculture Water Quality Plan Regulation

Chair Dew next introduced Leah MacSwords, Director of the Division of Forestry and Deputy Commissioner of the Department of Natural Resources, and Larry Lowe, Division of Forestry. Ms. MacSwords gave a briefing of the Division of Forestry's proposed forestry regulation 402 KAR 3:030 Agriculture Water Quality Plan revisions to the Forestry Best Management Practices. Afterwards, a motion to approve the regulation was made by Betsy Bennett and seconded by Jean Dorton. The motion passed unanimously.

Division of Air Quality Regulations

The Chair next recognized Millie Ellis, John Gowins and Heather Weese with the Division for Air Quality. A brief summary of the following regulations was given.

- 401 KAR 65:001 Definition for 401 KAR Chapter 65
- 401 KAR 65:010 Vehicle emission control programs

After discussion, a motion to approve these regulations was made by Gary Revlett and seconded by Betsy Bennett. The motion passed unanimously.

- 401 KAR 51:200 Regional NOx emission requirements for power plants (amend)

After discussion, a motion to approve the regulation was made by Betsy Bennett and seconded by Gary Revlett. The motion passed unanimously.

- 401 KAR 51:001 Definitions & abbreviations of terms for 401 KAR Chapter 51 (amend)
- 401 KAR 51:160 NOx requirements for large utility & industrial boilers
- 401 KAR 51:170 Banking & trading NOx allowances
- 401 KAR 51:180 NOx credits for early reduction
- 401 KAR 51:190 Banking & trading NOx allowances
- 401 KAR 51:195 NOx opt-in provisions

After discussion a motion to approve these regulations was made by Serena Williams and seconded by Betsy Bennett. The motion passed unanimously.

- A motion to recommend approval of the redesignation of Louisville to Attainment for one-hour Ozone was made by Gary Revlett and seconded by Jean Dorton. The motion passed unanimously.
- A motion to recommend approval of the corrective revision of the highway mobile source emissions budget for Marshall and a portion of Livingston Counties was made by Gary Revlett and seconded by Betsy Bennett. The motion passed unanimously.

Review of CAFO/AFO Emergency Regulation (5:074E)

The next agenda item was an update by Bruce Scott, Division of Water, concerning the Confined Animal Feeding Operation (CAFO) emergency regulation (5:074E). Kentucky's previous CAFO administrative regulation, 401 KAR 5:072, expired at the close of the 2001 legislative session on March 23, 2001.

The regulation has been challenged by the Farm Bureau alleging the new emergency regulation is substantially the same as the expired regulation, in violation of KRS 13A.3336. Oral arguments were heard on April 18, 2001 and "findings of fact" by the respective parties have been filed and are before Judge Crittendon in Franklin Circuit Court pending his decision.

Meanwhile, the U.S. Environmental Protection Agency (EPA) CAFO regulations were public noticed on January 12, 2001 with the comment period closing July 30, 2001. The regulations are scheduled to be finalized by December 2002 as per a Consent Decree. In order to provide citizens of Kentucky with an opportunity to learn more about the EPA's proposed regulations, an educational forum has been scheduled for May 30, 2001

in Bowling Green from 1 to 5:00 p.m. at the Western Kentucky University South Campus, Carroll Knicely Conference Center. Dr. Hilda Hatzell with the US EPA Region IV will provide an overview of the proposed regulations followed by a question and answer session.

A motion to endorse and support the adoption of the KRS 5:047E as a permanent rule was made by Jean Dorton and seconded by Betsy Bennett. The motion passed unanimously.

Martin County Coal Slurry Spill

The Chair introduced John Dovak, Division of Water. Mr. Dovak, updated the Commission of the quality of drinking water along the Cold Water Fork, Wolf Creek, Tug Fork and Big Sandy. All tests revealed that the water is safe to drink. Allen Luttrell, Deputy Commissioner of the Department for Surface Mining, accompanied by Iris Skidmore, Office of Legal Services, updated the commission on the cleanup of Cold Water Fork, Wolf Creek, Tug Fork, Big Sandy. He also reviewed the state's ongoing assessment of coal slurry impoundments in Kentucky. Mr. Luttrell handed out current pictures of the cleanup progress made at Cold Water Fork and Wolf Creek. He indicated that cleanup was ongoing.

Mr. Luttrell indicated that 118 coal slurry impoundments had been assessed. The assessments uncovered violations at seven impoundments.

Discussion and questions followed the presentation.

Have all the high priority impoundments been checked?

Luttrell - High priority impoundments in Eastern and Western Kentucky have been checked. By regulation, all impoundments are checked on a quarterly basis. (Betsy Bennett requested a list of those impoundments.)

What is the cost of the cleanup spent to-date?

The Department of Surface Mining and Division of Water are recording the cost of the cleanup. A bill will be submitted when the Consent Order is finalized.

Other Business

Executive Director Leslie Cole reported that the budget for EQC is 72 percent depleted with 83 percent of the budget year lapsed.

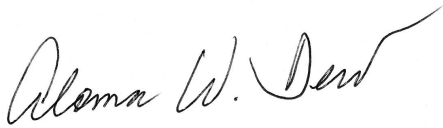
Pine Mountain Settlement School—A motion was made by Jean Dorton and seconded by Serena Williams to send a letter to Governor Paul E. Patton and Secretary James Bickford commending them for the decision to declare 2,862 acres unsuitable for mining near the Pine Mountain Settlement School in Harlan County. The motion passed unanimously.

Daniel Boone National Forest Acquisition Budget—The Daniel Boone National Forest acquisition program was not included in President Bush's budget. It is the largest tract of publicly owned land in Kentucky covering 695,643 acres. Continued acquisition of private inholdings will provide a number of benefits. A motion was made by Betsy Bennett and seconded by Gary Revlett to send a letter to Governor Paul E. Patton and Kentucky's congressional delegation encouraging support for the Daniel Boone National Forest's request for federal appropriations for its land acquisition program. The motion passed unanimously.

The State of Kentucky's Environment report—Ms. Cole reported that the State of Kentucky's Environment report is nearly complete. The findings will be sent to department heads for their final comments.

Trimodal Transpark - Ms. Cole called the commissioner's attention to a letter from the superintendent of Mammoth Cave National Park regarding the TriModal Transpark project in Bowling Green. Ms. Cole also apprised commissioners of several citizen concerns sent to EQC regarding the siting of power plants. In regard to this, Betsy Bennett called to the Commission's attention the KRS 262.850 – 875, a little known law called the Interagency Farmland Advisory Committee. The law requires that this committee must review any state action that impacts 50 acres or more of farmland. EQC is a member of this committee. However, the committee has not met in several years. Ms. Cole noted that 900,000 acres of farmland had been converted to other uses between 1992 and 1997. Commissioners discussed the potential benefits of this committee to serve as a forum to discuss development projects and their impacts to farmland in Kentucky. Serena Williams agreed to be the EQC delegate to the committee. A motion was made by Jean Dorton and seconded by Aloma Dew send a letter to Governor Patton requesting that the Interagency Farmland Committee be convened to review the TriModal Transpark and other state projects impacting more than 50 acres of farmland. The motion passed unanimously.

There being no further business, the meeting adjourned at 3:30 p.m. The next meeting is scheduled for July 26.



Signed

September 25, 2001

Date